

ASSEMBLY BILL

No. 1866

Introduced by Assembly Member Wright

January 31, 2002

An act to amend Sections 65852.2, 65913.5, and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1866, as introduced, Wright. Housing: density bonuses.

(1) The existing Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for a primary single-family and multifamily residence, as prescribed.

This bill would require that the ordinance provide for ministerial approval without discretionary review of applications for 2nd units that meet the requirements of the ordinance, notwithstanding other laws that regulate the issuance of variance, special use, or conditional use permits.

(2) The existing Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with incentives or concessions for the production of lower income housing units within the development if the developer meets specified requirements.

This bill would recast those provisions to, among other things, revise criteria for making written findings that a concession or incentive is not required, add criteria for continued affordability of housing in a common interest development, and exempt developments meeting certain affordability criteria from specified laws.

(3) The bill would also require that the provisions specified in (1) and (2) apply to a city, county, or city and county in a coastal zone, but would specify that this provision is declarative of existing law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65852.2 of the Government Code is
2 amended to read:

3 65852.2. (a) *(1)* Any local agency may, by ordinance,
4 provide for the creation of second units in single-family and
5 multifamily residential zones. The ordinance *may do any of the*
6 *following*:

7 ~~(1) May designate~~

8 *(A) Designate* areas within the jurisdiction of the local agency
9 where second units may be permitted. The designation of areas
10 may be based on criteria, ~~which~~ *that* may include, but are not
11 limited to, the adequacy of water and sewer services and the impact
12 of second units on traffic flow.

13 ~~(2) May impose~~

14 *(B) Impose* standards on second units ~~which~~ *that* include, but
15 are not limited to, parking, height, setback, lot coverage,
16 architectural review, and maximum size of a unit.

17 ~~(3) May provide~~

18 *(C) Provide* that second units do not exceed the allowable
19 density for the lot upon which the second unit is located, and that
20 second units are a residential use that is consistent with the existing
21 general plan and zoning designation for the lot.

22 ~~(4) May establish~~

23 *(D) Establish* a process for the issuance of a conditional use
24 permit for second units.

25 ~~(5) Shall~~

26 *(2) The ordinance shall* not be considered in the application of
27 any local ordinance, policy, or program to limit residential growth.

28 *(3) The ordinance shall require ministerial approval without*
29 *discretionary review of applications for second units that meet the*
30 *requirements of the ordinance, notwithstanding Section 65901 or*
31 *65906 or any local ordinance regulating the issuance of variances*
32 *or special use or conditional use permits.*

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a conditional use permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a *variance*, special use, or a conditional use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floor space for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

1 (4) No changes in zoning ordinances or other ordinances or any
2 changes in the general plan shall be required to implement this
3 subdivision. Any local agency may amend its zoning ordinance or
4 general plan to incorporate the policies, procedures, or other
5 provisions applicable to the creation of second units if these
6 provisions are consistent with the limitations of this subdivision.

7 (5) A second unit which conforms to the requirements of this
8 subdivision shall not be considered to exceed the allowable density
9 for the lot upon which it is located, and shall be deemed to be a
10 residential use which is consistent with the existing general plan
11 and zoning designations for the lot. The second units shall not be
12 considered in the application of any local ordinance, policy, or
13 program to limit residential growth.

14 (c) No local agency shall adopt an ordinance which totally
15 precludes second units within single-family or multifamily zoned
16 areas unless the ordinance contains findings acknowledging that
17 the ordinance may limit housing opportunities of the region and
18 further contains findings that specific adverse impacts on the
19 public health, safety, and welfare that would result from allowing
20 second units within single-family and multifamily zoned areas
21 justify adopting the ordinance.

22 (d) A local agency may establish minimum and maximum unit
23 size requirements for both attached and detached second units. No
24 minimum or maximum size for a second unit, or size based upon
25 a percentage of the existing dwelling, shall be established by
26 ordinance for either attached or detached dwellings which does not
27 permit at least an efficiency unit to be constructed in compliance
28 with local development standards.

29 (e) Parking requirements for second units shall not exceed one
30 parking space per unit or per bedroom. Additional parking may be
31 required provided that a finding is made that the additional parking
32 requirements are directly related to the use of the second unit and
33 are consistent with existing neighborhood standards applicable to
34 existing dwellings. Off-street parking shall be permitted in setback
35 areas in locations determined by the local agency or through
36 tandem parking, unless specific findings are made that parking in
37 setback areas or tandem parking is not feasible based upon specific
38 site or regional topographical or fire and life safety conditions, or
39 that it is not permitted anywhere else in the jurisdiction.



(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) “Living area,” means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, “neighborhood” has the same meaning as set forth in Section 65589.5.

(4) “Second unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) *The requirements of this section shall also apply to a local agency in a coastal zone as defined and described in Division 20 (commencing with Section 30000) of the Public Resources Code, notwithstanding any other requirements of that division. This requirement is declaratory of existing law.*

SEC. 2. Section 65913.5 of the Government Code is amended to read:

65913.5. (a) As part of the implementation of the demonstration program established pursuant to Section 14045 of the Government Code, a city, county, or city and county participating in the demonstration program shall grant a density bonus to a developer of housing within one-half mile of a mass

1 transit guideway station unless the locality finds that granting of
2 the density bonus would result in a specific, adverse impact upon
3 the public health or safety, and there is no feasible method to
4 satisfactorily mitigate or avoid the specific adverse impact.

5 (b) Notwithstanding subdivision ~~(f)~~ (g) of Section 65915, as
6 used in this section, “density bonus” means a density increase of
7 at least 25 percent over the otherwise maximum residential density
8 allowed under the general plan and any applicable zoning and
9 development ordinances.

10 (c) A city, county, or city and county may require a developer
11 to enter into a development agreement pursuant to Article 2.5
12 (commencing with Section 65864) of Chapter 3 of Division 1 of
13 Title 7 to implement a density bonus granted pursuant to this
14 section.

15 (d) In an action or proceeding to attack, set aside, void, or annul
16 a density bonus granted pursuant to this section, a court shall
17 uphold the decision of a city, county, or city and county to grant
18 the density bonus if the court finds that there is substantial
19 evidence in the record that the housing development will assist the
20 city, county, or city and county to do all of the following:

21 (1) Meet its share of the regional housing needs determined
22 pursuant to Article 10.6 (commencing with Section 65580) of
23 Chapter 4 of Division 1 of Title 7.

24 (2) Implement its congestion management plan adopted
25 pursuant to Chapter 2.6 (commencing with Section 65088) of
26 Division 1 of Title 7.

27 (e) Nothing in this section shall be construed to relieve any
28 local agency from complying with ~~the provisions of the~~
29 Congestion Management Program required by Chapter 2.6
30 (commencing with Section 65088) of Division 1 of Title 7.

31 SEC. 3. Section 65915 of the Government Code is amended
32 to read:

33 65915. (a) ~~When a developer of housing an applicant~~
34 ~~proposes a housing development within the jurisdiction of the~~
35 ~~local government, the~~ a city, county, or city and county, ~~that local~~
36 ~~government shall provide the developer applicant incentives or~~
37 ~~concessions for the production of lower income housing units~~
38 ~~within the development if the developer meets the requirements set~~
39 ~~forth in subdivisions (b) and (c). The city, county, or city and~~
40 ~~county housing units as prescribed in this chapter. All cities,~~

counties, or cities and counties shall adopt an ordinance that shall specify the method of providing developer incentives specifies how compliance with this section will be implemented.

(b) When a developer of housing agrees or proposes to construct at least (1) 20 percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (2) 10 percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) 50 percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, a city, county, or city and county shall either (1) grant a density bonus and at least one of the concessions or incentives identified in subdivision (b) (i) unless the city, county, or city and county makes a written finding, based on an objective, written project feasibility analysis, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c), or (2) provide other incentives of equivalent financial value based upon the land cost per dwelling unit.

(c) (1) A developer shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income. If a city, county, or city and county does not grant at least one additional concession or incentive pursuant to the second paragraph (1) of subdivision (b), the developer shall agree to and the city, county, or city and county shall ensure continued affordability for 10 years of all lower income housing units receiving a density bonus.

(2) A developer shall agree to, and the city, county, or city and county shall ensure, continued affordability of the low- and

1 *moderate-income units that are directly related to the receipt of the*
2 *density bonus for 10 years if the housing is in a common interest*
3 *development, as defined in Section 1351 of the Civil Code.*

4 (d) A developer may submit to a city, county, or city and county
5 a preliminary proposal for the development of housing pursuant to
6 this section prior to the submittal of any formal requests for general
7 plan amendments, zoning amendments, or subdivision map
8 approvals. The city, county, or city and county shall, within 90
9 days of receipt of a written proposal, notify the housing developer
10 in writing of the procedures under which it will comply with this
11 section. The city, county, or city and county shall establish
12 procedures for carrying out this section, which shall include
13 legislative body approval of the means of compliance with this
14 section. The city, county, or city and county shall also establish
15 procedures for waiving or modifying development and zoning
16 standards that would otherwise inhibit the utilization of the density
17 bonus on specific sites. These procedures shall include, but not be
18 limited to, such items as minimum lot size, side yard setbacks, and
19 placement of public works improvements.

20 (e) *A development meeting the criteria of subdivision (b) shall*
21 *be exempt from any ordinance, general plan element, other local*
22 *law, policy, or regulation, or from the imposition of any condition*
23 *that would, by its terms or effects, preclude the construction of the*
24 *development at the densities or with the concessions or incentives*
25 *permitted by this section.*

26 (f) The housing developer shall show that the waiver or
27 modification is necessary to make the housing units economically
28 feasible.

29 ~~(f)~~

30 (g) For the purposes of this chapter, “density bonus” means a
31 density increase of at least 25 percent, unless a lesser percentage
32 is elected by the developer, over the otherwise maximum
33 allowable residential density under the applicable zoning
34 ordinance and land use element of the general plan as of the date
35 of application by the developer to the city, county, or city and
36 county. The granting of a density bonus shall not be interpreted,
37 in and of itself, to require a general plan amendment, zoning
38 change, or other discretionary approval. The density bonus shall
39 not be included when determining the number of housing units
40 which is equal to 10 or 20 percent of the total. The density bonus

1 shall apply to housing developments consisting of five or more
2 dwelling units.

3 ~~(g)~~

4 (h) "Housing development," as used in this section, means one
5 or more groups of projects for residential units constructed in the
6 planned development of a city, county, or city and county. For the
7 purposes of this section, "housing development" also includes
8 either (1) a project to substantially rehabilitate and convert an
9 existing commercial building to residential use, or (2) the
10 substantial rehabilitation of an existing multifamily dwelling, as
11 defined in subdivision (d) of Section 65863.4, where the result of
12 the rehabilitation would be a net increase in available residential
13 units. For the purpose of calculating a density bonus, the
14 residential units do not have to be based upon individual
15 subdivision maps or parcels. The density bonus shall be permitted
16 in geographic areas of the housing development other than the
17 areas where the units for the lower income households are located.

18 ~~(h)~~

19 (i) *The granting of a concession or incentive shall not be*
20 *interpreted, in and of itself, to require a general plan amendment,*
21 *zoning change, or other discretionary approval. This provision is*
22 *declaratory of existing law.*

23 (j) For the purposes of this chapter, concession or incentive
24 means any of the following:

25 (1) A reduction in site development standards or a modification
26 of zoning code requirements or architectural design requirements
27 that exceed the minimum building standards approved by the
28 California Building Standards Commission as provided in Part 2.5
29 (commencing with Section 18901) of Division 13 of the Health
30 and Safety Code, including, but not limited to, a reduction in
31 setback and square footage requirements and in the ratio of
32 vehicular parking spaces that would otherwise be required.

33 (2) Approval of mixed use zoning in conjunction with the
34 housing project if commercial, office, industrial, or other land uses
35 will reduce the cost of the housing development and if the
36 commercial, office, industrial, or other land uses are compatible
37 with the housing project and the existing or planned development
38 in the area where the proposed housing project will be located.

1 (3) Other regulatory incentives or concessions proposed by the
2 developer or the city, county, or city and county that result in
3 identifiable *and actual* cost reductions.

4 This subdivision does not limit or require the provision of direct
5 financial incentives for the housing development, including the
6 provision of publicly owned land, by the city, county, or city and
7 county, or the waiver of fees or dedication requirements.

8 ~~(i)~~

9 (k) If a developer agrees to construct both 20 percent of the total
10 units for lower income households and 10 percent of the total units
11 for very low income households, the developer is entitled to only
12 one density bonus and at least one additional concession or
13 incentive identified in Section 65913.4 under this section although
14 the city, city and county, or county may, at its discretion, grant
15 more than one density bonus.

16 (l) *The requirements of this section shall also apply to a city,*
17 *county, or city and county in a coastal zone as defined and*
18 *described in Division 20 (commencing with Section 30000) of the*
19 *Public Resources Code, notwithstanding any other requirements*
20 *of that division. This requirement is declaratory of existing law.*

